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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,335	09/24/2001	Kenneth A. Klarfeld	MET2.PAU.23	2141
23386 7590 01/22/2009 MYERS DAWES ANDRAS & SHERMAN, LLP 19900 MACARTHUR BLVD. SUITE 1150 IRVINE, CA 92612				
EXAMINER BROWN, RUEBEN M				
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/963,335

**Applicant(s)**

KLARFELD ET AL.

**Examiner**

REUBEN M. BROWN

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/21/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No.(s)/Mail Date: \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims have been considered but are not persuasive. Applicant's argument is that Herz does not teach the claimed feature of, *'receiving feedback input from the viewer after viewing the first list, the input requesting different selections than in the first list...presenting the viewer with a second list including alternative TV programs available for viewing, the alternative programs selected in accordance with an alternative viewer characteristics information profile'*. Applicant argues on page 8, that with respect to Herz, "...Therefore, it is clear that while a viewer's profile is updated, no viewing list is updated...". Examiner respectfully disagrees.

This portion of applicant's claimed invention requires that the viewer is presented with a list of programs, such that the programs are based on the viewer's characteristics information profile, which is met by Herz (col. 23, lines 1-15). Next, applicant's system receives feedback input from the viewer after the first list is viewed, such that the input is for requests of programs not on the first list. In Herz, the customer is presented with a list of recommended programs (either by a virtual channel(s) or highlighting recommended programs on an EPG or re-ordering the list of programs on the EPG, so that recommended programs are obvious to the instant customer), see col. 45, lines 34-42. Subsequently, the system in Herz determines whether the customer did or did not watch the predicted/recommended program(s); see col. 26, lines 51-67

thru col. 27, lines 1-5. This feature meets the claimed subject matter since it clearly discloses that at least some of the feedback to the system is the fact the customer made program selections that were not predicted, and thus the instant customer profile should be updated, col. 27, lines 1-3, based on the programs that were actually watched.

The final portion of applicant's claimed invention requires that the viewer is presented with a second list that includes alternative TV programs selected in accordance with the alternative (i.e., updated) viewer characteristics information profile. It is important to note that that as pointed out above, applicant admits that Herz does in fact update the viewer's profile based on these programs selections, but nevertheless goes on to assert that somehow the list of recommended programs would still stay the same.

To the contrary, Herz clearly points out that once the viewer profile is adjusted, based on programs actually watched, that the agreement matrix and therefore the list of recommended programs is also adjusted, see col. 27, lines 4-6; col. 31, lines 5-14; col. 41, lines 8-14; col. 41, lines 57-63. This means that the customer's updated/adjusted recommended list of programs will necessarily contain programs that reflect a difference from the first list, as long as those programs actually watched had attributes different from the attributes of the programs on the first list of recommended programs.

Based on applicant's assertion, Herz would operate by updating a customer's profile, without ever changing the list of recommended programs, **which would defeat the purpose of**

**having an adjusted/updated customer profile.** For example, if a customer's initial profile in Herz suggested that the customer would most likely enjoy comedy and western movies, then the customer would be presented with a list of recommended comedy and western movies. However, if the instant customer does not select any of the recommended programs, but instead selects only sports (baseball) and WWII documentaries for instance, then according to applicant's characterization of Herz, the instant customer profile would change but the customer would still only be presented with the same recommended list comedy & western movies. Of course, this example would defeat the purpose of the passive monitoring, and updating customer profile in Herz. To the contrary, the customer in this instance of Herz would be presented with a recommended list baseball programs and documentaries related to WWII, because those are the type of programs that were actually watched.

Applicant goes on to argue that in Herz, "the viewer can view the list and select shows from the list, but the list is all inclusive...That is, all available shows for the viewer are contained on the list...To clarify, the one list has regular channels and virtual channels that can be adjusted over time...The regular channels and virtual channels are simply not on two separate lists (Herz, Fig. 9, single programming list 902)". First of all, the available programs only represents a snapshot in time, i.e., the programs that are available at a particular day & time, based on the customer's current profile/agreement matrix, see col. 45, lines 12-32. As the customer's profile is adjusted and a different agreement matrix is calculated, then a different set of programs will be available to the user, because it would a different day and thus, there are different programs to

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broadcast. A different set of recommended programs will be presented to the instant customer, because the agreement matrix has also been adjusted.

Therefore, in light of the above discussion, examiner maintains the rejection of record.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 20-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Herz, (U.S. Pat # 5,758,257).

Considering claims 20 & 28, the claimed method of displaying a TV program to a viewer, comprising *'processing information indicative of preferences of the viewer to develop a viewer characteristic information profile for the viewer'* is met by Herz, col. 10, lines 6-55; col. 11, lines 15-65 thru col. 12, lines 1-55; col. 14, lines 10-65, col. 15, lines 10-60.

*'Storing the viewer characteristics information profile on a viewer storage device', is met by col. 40, lines 21-65; col. 41, lines 1-15; col. 45, lines 9-30. 'Presenting the viewer with a first list of TV programs available for viewing, the programs selected in accordance with the characteristics information profile', is met by Herz, col. 23, lines 1-18 & col. 25, lines 49-67, which teaches virtual channels of recommended programs or highlighting recommended programs on an EPG or re-ordering the list of programs on the EPG, based on the instant customer's profile.*

The amended claimed feature of *'receiving feedback input from the viewer after viewing the first list, the input requesting different selections than in the first list'; and 'presenting the viewer with a second list including alternative TV programs for viewing, the alternative list selected in accordance with an alternative characteristics information profile', is met by the disclosure in Herz that the system determines if the customer actually watched the video programs that were recommended by the agreement matrix, col. 26, lines 51-67; col. 31, lines 5-14; col. 46, lines 42-49, for the purpose of adjusting the agreement matrix of a particular customer.*

If the customer did not select/watch the predicted program(s), then the system adjusts the customer's profile, based on what program(s) was actually watched. Therefore the disclosure of Herz, reads on the claimed subject matter, since after the agreement matrix is updated, then the customer would be given an updated/adjusted (i.e., different) list of recommended programs, in

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light of what was actually requested by the customer, see col. 27, lines 1-6; col. 41, lines 8-14; col. 41, lines 57-63.

Considering claim 21, the claimed subject matter is met by Herz, col. 29, lines 1-26.

Considering claim 22, the claimed subject matter is met by Herz, col. 26, lines 21-50, which teaches that a plurality of profiles for different viewer may be stored at the STB.

Considering claims 23-27, Herz meets all subject matter, col. 17, lines 35-65; col. 23, lines 1-15; col. 26, lines 5-65; col. 46, lines 1-20.

Considering claims 29-31, see Herz, col. 26, lines 1-21; col. 29, lines 1-25; col. 29, lines 30-65 & col 45, lines 20-65; col. 49, lines 1-10.

Considering claim 32, the claimed method for presenting TV programs to a viewer, comprises steps that correspond with subject matter mentioned above in the rejection of claim 20, and is likewise treated. As for the additional feature, of the *'first list arranged without viewer input'*, in Herz the arrangement of the virtual lists are without user input, col. 45, lines 35-45.

Considering claim 33, the claimed subject matter reads on the user in Herz manually selecting a different program, not on the recommended list of programs using a remote control device, such as remote control device 1008, see col. 46, lines 42-60; Fig. 10.



Considering claim 34, by definition, at least some of the programs presented to the customer in Herz, based on an agreement matrix re-calculated as a result of an adjusted customer profile, would be different from the first list of recommended programs, as long as the programs that were actually watched by the customer had content attributes different from the content attributes of the programs in the first recommended list of programs.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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**Any response to this action should be mailed to:**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**or faxed to:**

(571) 273-8300, (for formal communications intended for entry)

**Or:**

(571) 273-7290 (for informal or draft communications, please label  
"PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reuben M. Brown whose telephone number is (571) 272-7290. The examiner can normally be reached on M-F(8:30-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communications and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Son P Huynh/

Primary Examiner, Art Unit 2424